



FAIR POLITICAL PRACTICES COMMISSION

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May 5, 2003

John J. Sansone, County Counsel
County of San Diego
Office of the County Counsel
1600 Pacific Highway, Room 355
San Diego, CA 92101-2469

**Re: Your Request for Informal Assistance
Our File No. I-03-058**

Dear Mr. Sansone:

This letter is in response to your request for advice on behalf of two members of the San Diego County Board of Supervisors, Dianne Jacob and Bill Horn, regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ We are providing you with informal assistance² since we do not have all material facts necessary to issue formal advice.³ (See regulation 18329(b)(8)(C).)

Please bear in mind that the Commission does not provide advice relating to past conduct. (Regulation 18329(b)(8)(A).) Any conclusions in this letter apply only to prospective actions.

QUESTION

May Supervisor Jacob or Supervisor Horn participate in a general plan amendment decision to approve a land use map which proposes to either upzone or downzone numerous properties in the county?

¹ Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations. All statutory references are to the Government Code unless otherwise indicated.

² Only formal written advice confers immunity provided under section 83114(b) and regulation 18329(b)(7). Informal assistance does not provide immunity. (Regulation 18329(c)(3), copy enclosed.)

³ Specifically, we have requested additional facts pertaining to the "public generally" exception in order to issue formal advice on the decision about which you have inquired.

CONCLUSION

Each supervisor owns property which is presumed to experience a material financial effect from this decision under the Act's conflict-of-interest rules. However, the "public generally" exception may apply if the decision will affect each economic interest of each supervisor in "substantially the same manner" as it will affect a "significant segment" of the public generally.

FACTS

You have provided the following facts in your incoming correspondence and telephone conversations with Commission counsel.

Dianne Jacob and Bill Horn are members of the County of San Diego Board of Supervisors. A major amendment to the general plan is currently being prepared by county staff, which will involve every element of the general plan, as well as review of the community plans within the entire unincorporated area of the county. Such an action will apply to and affect virtually all real property interests in the unincorporated area. Supervisors Horn and Jacob own real property in the unincorporated area. The current plan of county staff is to bring the first substantive item (the draft land use element) to the board on May 7, 2003. The specific governmental decision that will come before the supervisors is the conceptual approval of the land use map that proposes to move growth from the East to the West through density zoning.

The land use element sets forth proposed densities for properties in the unincorporated area. Consistent with the principles of "smart growth," the proposal calls for higher densities of development in areas where public services exist, and lower densities in rural areas where public services are not as readily available.

The general plan amendment proposals will include actions to "downzone" undeveloped and agricultural lands throughout the unincorporated area of the county. The proposals will also "upzone" properties where public services (water, sewer, etc.) already exist. Additionally, it is anticipated that the proposals will include the opportunity for property owners of downzoned property to purchase "TDRs" (i.e., transfer of development rights). Under the TDR program, a property that is to be downzoned retains the ability to transfer some or all of the units it loses to another area where development is desired for compensation.

The decision will not apply to all properties in any one designated category.

The real property interests of all property owners who receive a higher designation most likely will be an increase in property values due to the increased densities.

A portion of the proposed action will increase the designation of thousands of properties, which will result in an increased density. This portion of the proposed action

will affect 9,974 property owners (and 13,514 properties) in the unincorporated area of the County. The portion of the proposed action to decrease density will affect 10,000 property owners.

With respect to the real property on which Supervisor Jacob's residence is located, the designation of this property does not change at all. However, there are properties within 500 feet of one of her other properties that would be subject to a decrease in density to come more into line with the 1 unit per 40 acres on her property. This is due to groundwater issues in the area. There are over 5,000 property owners throughout the county who will receive a reduction in density and it is likely that this will result in a decrease in the value of their property.

The properties of the supervisors are currently zoned "General Agricultural" and are proposed to be rezoned "Semi-Rural/Residential." Specifically, the real property of the officials and the effect of the proposed amendment are as follows:

Supervisor Jacob

Jacob Property A: This property consists of a 13,000 square foot lot, which includes her private residence. It is designated as 1 unit per 4 acres, and will remain at this current designation under the proposed action.

Jacob Property B: This property consists of 3 contiguous parcels of approximately 90 acres of agricultural land, which is used for dry farming oat hay. The property also includes a barn. It is designated at 1 unit per 40 acres, and will remain at this current designation under the proposed action. There are other properties within 500 feet of this property that currently have higher densities. Those other properties will face a reduction in density to between 1 unit per 10 acres and 1 unit per 40 acres under the proposed action.

Supervisor Horn:

Horn Property 1: This property consists of 20 acres, which includes Supervisor Horn's personal residence, a single-family home, and the balance of the property includes avocado groves. This property is currently designated as 1 unit per 10 acres and it would be redesignated 1 unit per 4 acres.

Horn Property 2: This property consists of 12 acres of Valencia orange groves. This property is currently designated as 1 unit per 10 acres and it would be redesignated 1 unit per 4 acres.

Horn Property 3: This property consists of 2.5 acres of tangelo groves. This property is currently designated as 1 unit per 10 acres and it would be redesignated 1 unit per 2 acres.

The following information describes the number of “General Agricultural” parcels for which some new densities are proposed:

<u>Current Density</u>		<u>Proposed Density</u>	<u>Number of Parcels</u>
From 1 unit per 10 acres	to	1 unit per 4 acres	100 parcels
From 1 unit per 10 acres	to	1 unit per 2 acres	143 parcels
From 1 unit per 10 acres	to	1 unit per 1 acre	188 parcels

A designation of 1 unit per 4 acres is similar to designations of 1 unit per 2 acres and 1 unit per 1 acre. A designation of 1 unit per 2 acres is similar to 1 unit per 1 acre.

ANALYSIS

The primary purpose for the conflict-of-interest provisions of the Act is to ensure that “[p]ublic officials, whether elected or appointed, [should] perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them.” (Section 81001(b).) In furtherance of this goal, section 87100 of the Act prohibits a public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest.

Determining whether a conflict of interest exists under section 87100 requires analysis of the following questions as outlined below.⁴

Steps One and Two: Are Dianne Jacob and Bill Horn each considered a “public official” and is each making, participating in making, or influencing a governmental decision?

As members of the San Diego County Board of Supervisors, Dianne Jacob and Bill Horn are each a “member, officer, employee or consultant of a state or local government agency” and are, therefore, public officials subject to the conflict-of-interest provisions of the Act. (Section 82048; regulation 18701(a).)

A public official “makes a governmental decision” when the official, acting within the authority of his or her office or position, votes on a matter, obligates or commits his or her agency to any course of action, or enters into any contractual agreement on behalf of his or her agency. (See regulation 18702.1.)

Supervisors Jacob and Horn will “make a governmental decision” if she or he votes on a general plan amendment decision regarding the land use map and whether to upzone or downzone a particular area of the county. Additionally, if either official engages in any of the actions described in enclosed regulations 18702.2 and 18702.3 with

⁴ These questions are based on the Act’s conflict-of-interest analysis provided at regulation 18700(b).

regard to this decision, that will constitute “participate in making” or “influencing” that decision.

Step Three: What are Supervisor Jacob’s and Supervisor Horn’s economic interests — the possible source of a conflict of interest?

Section 87103 provides that a public official has a “financial interest” in a governmental decision “if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family,” or on any of the official’s economic interests, described as follows:

- A public official has an economic interest in a business entity in which he or she has a direct or indirect investment ⁵ of \$2,000 or more (section 87103(a); regulation 18703.1(a)); or in which he or she is a director, officer, partner, trustee, employee, or holds any position of management (section 87103(d); regulation 18703.1(b));
- A public official has an economic interest in real property in which he or she has a direct or indirect interest of \$2,000 or more (section 87103(b); regulation 18703.2);
- A public official has an economic interest in any source of income, including promised income, which aggregates to \$500 or more within 12 months prior to the decision (section 87103(c); regulation 18703.3);
- A public official has an economic interest in any source of gifts to him or her if the gifts aggregate to \$340 or more within 12 months prior to the decision (section 87103(e); regulation 18703.4);
- A public official has an economic interest in his or her personal finances, including those of his or her immediate family -- this is the “personal financial effects” rule (section 87103; regulation 18703.5).

“Business entity” means:

“...means any organization or enterprise operated for profit, including but not limited to a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation or association.” (Section 82005.)

⁵ An indirect investment or interest means any investment or interest owned by the spouse of an official or by a member of the official’s immediate family, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official’s immediate family, or their agents own directly, indirectly, or beneficially a 10-percent interest or greater. (Section 87103.) “Immediate family” is defined at section 82029 as an official’s spouse and dependent children.

Supervisor Jacob

Supervisor Jacob has an economic interest in the parcels identified as Jacob Property A and Jacob Property B provided she has an interest of \$2,000 or more in these properties. In addition, if she has invested \$2,000 or more to gain profit from the cultivation of dry farming oat hay on her property, she will be considered to have an economic interest in an oat hay farming business.

You do not provide facts regarding any sources of income to her business. However, please be aware that Supervisor Jacob may also have an economic interest in any customer or lessee from whom her business has received \$500 or more in 12 months prior to the time the decision is made. Without additional information, we are unable to analyze any such economic interest herein.

Supervisor Horn

Supervisor Horn has an economic interest in the parcels identified as Horn Property 1 – 3 provided he has an interest of \$2,000 or more in these properties. For the reasons stated above, Supervisor Horn will also have an economic interest in a fruit cultivation business if he has invested \$2,000 or more in this business entity.⁶ In addition, as with Supervisor Jacob, Supervisor Horn should determine whether he has an economic interest in a customer or lessee from whom his business has received \$500 or more within 12 months before the decision.

You have not provided information regarding any other economic interests of Supervisors Jacob and Horn. For purposes of this letter, we assume that each has no other economic interests relevant to the decision you have identified.

Step Four: Are Supervisor Jacob's and Supervisor Horn's economic interests directly or indirectly involved in the governmental decision?

Interest in Real Property

Real property in which a public official has an economic interest is directly involved in a governmental decision if any of the following apply:

“(1) The real property in which the official has an interest, or any part of that real property, is located within 500 feet of the boundaries (or the proposed boundaries) of the property which is the subject of the governmental decision. For purposes of subdivision (a)(5), real property is located “within 500 feet of the boundaries (or proposed boundaries)

⁶ Your facts do not indicate whether Supervisor Horn has organized distinct business entities separately for one or more of the fruit types cultivated on his property. Depending on how he operates this cultivation, it is possible that he has economic interests in more than one business entity. However, for purposes of this letter, we assume that he has an economic interest in just one business entity.

of the real property which is the subject of the governmental decision” if any part of the real property is within 500 feet of the boundaries (or proposed boundaries) of the redevelopment project area.

(2) The governmental decision involves the zoning or rezoning, annexation or deannexation, sale, purchase, or lease, or inclusion in or exclusion from any city, county, district or other local governmental subdivision, of the real property in which the official has an interest or a similar decision affecting the real property. For purposes of this subdivision, the terms “zoning” and “rezoning” shall refer to the act of establishing or changing the zoning or land use designation on the real property in which the official has an interest.

(3) The governmental decision involves the issuance, denial or revocation of a license, permit or other land use entitlement authorizing a specific use or uses of the real property in which the official has an interest.

(4) The governmental decision involves the imposition, repeal or modification of any taxes or fees assessed or imposed on the real property in which the official has an interest.

(5) The governmental decision is to designate the survey area, to select the project area, to adopt the preliminary plan, to form a project area committee, to certify the environmental document, to adopt the redevelopment plan, to add territory to the redevelopment area, or to rescind or amend any of the above decisions; and real property in which the official has an interest, or any part of it is located within the boundaries (or the proposed boundaries) of the redevelopment area.

(6) The decision involves construction of, or improvements to, streets, water, sewer, storm drainage or similar facilities, and the real property in which the official has an interest will receive new or improved services.”
(Regulation 18704.2(a).)

Direct Involvement: Since the general plan amendment decision proposes to rezone the designated densities of Horn Property 1 – 3 through approval of the land use map, these properties are governed by subdivision (a)(2) of regulation 18704.2. As a result, Horn Property 1 – 3 are directly involved in the general plan amendment decision. In contrast to the Horn properties, the Jacob Property B will not be subject to such rezoning. (Jacob Property A is discussed below.) Therefore, regulation 18704.2(a)(2) would not apply to Jacob Property B.

However, you have stated that the Jacob Property B is located *within 500 feet* of other properties that would be subject to zoning changes. Because each of these nearby properties will be subject to zoning changes, each will be considered the “subject of the decision,” and subdivision (a)(1), rather than subdivision (a)(2), of regulation 18704.2 will apply to Jacob Property B.

Subdivision (b) of this regulation provides several exceptions to the direct involvement provisions of subdivision (a). None of these exceptions apply to your facts. Consequently, Horn Property 1 –3 and Jacob Property B are **directly involved** in the general plan amendment decision.

Indirect Involvement: Since Jacob Property A is neither subject to rezoning nor located with 500 feet of property subject to rezoning, this property is **indirectly involved** in the decision. (See regulation 18704.2(c)(2).)

Business Entity/Source of Income

A person, including business entities, sources of income, and sources of gifts, is directly involved in a decision before an official’s agency when that person, either directly or by an agent:

- (1) Initiates the proceeding in which the decision will be made by filing an application, claim, appeal, or similar request or;
- (2) Is a named party in, or is the subject of, the proceeding concerning the decision before the official or the official’s agency. A person is the subject of the proceeding if a decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the subject person.” (Regulation 18704.1(a).)

Your facts do not indicate that any of the supervisors’ businesses or sources of income initiated the proceeding in which the decisions will be made or is a named party or subject of the proceeding. Assuming the businesses or sources of income, if any, do not meet the subdivisions (1) or (2) above, they are **indirectly involved** in the decision.

Step Five: What is the applicable materiality standard?

Interest in Real Property

Indirect Involvement: As noted, Horn Property 1 –3 and Jacob Property B are directly involved in the decision. If the real property in which an official has an economic interest is directly involved in a governmental decision, the materiality standards of regulation 18705.2(a) apply. (Regulation 18704.2(b)(1).)

Regulation 18705.2(a)(1) provides that the financial effect of a governmental decision on real property (other than a leasehold) which is directly involved in the governmental decision is presumed to be material. “This presumption may be rebutted by proof that it is not reasonably foreseeable that the governmental decision will have any financial effect on the real property.” (*Ibid.*) Please note that “any financial effect” includes as little as a penny’s worth.

Indirect Involvement: If a real property interest is *not* directly involved in a governmental decision, materiality standards for indirectly involved property apply. (Regulation 18704.2(c)(2).) Consequently, the following rule applies to the indirectly involved Jacob Property A:

“...The financial effect of a governmental decision on real property which is indirectly involved in the governmental decision is presumed not to be material. This presumption may be rebutted by proof that there are specific circumstances⁷ regarding the governmental decision, its financial effect, and the nature of the real property in which the public official has an economic interest, which make it reasonably foreseeable that the decision will have a material financial effect on the real property in which the public official has an interest....” (Regulation 18705.2(b)(1).) (Footnote added)

Business Entity/Source of Income

Regulation 18705.1(c) provides the materiality standards applicable to business entities indirectly involved in a decision. Subdivision (c)(1) of regulation 18705.1 applies only where a business entity is listed on the Fortune 500. Subdivisions (c)(2) – (3) of regulation 18705.1 apply where a business entity is listed on a certain exchange (e.g., the New York Stock Exchange, the NASDAQ, or the American Stock Exchange); in addition, subdivisions (c)(2) – (c)(3) apply where a business entity is not listed on one of the specified exchanges but alternate earnings/income criteria for the entity are met. Finally, subdivision (c)(4) applies to business entities, such as small businesses, not covered by subdivisions (c)(1)-(3).

Regulation 18705.3(b) (enclosed) applies to sources of income which are indirectly involved in a decision. (Regulation 18704.1(b).)

Without additional information, we are unable to determine which materiality standard applies to a business entity or source of income in which Supervisor Jacob or

⁷ Regulation 18705.2(b) (enclosed) provides examples of specific circumstances that will be considered.

Horn may have an economic interest. Each supervisor should identify and apply the applicable subdivision.⁸

Step Six: Is it reasonably foreseeable that the financial effect of the governmental decision upon any of the supervisors' economic interests will meet the applicable materiality standard?

An effect upon economic interests is considered "reasonably foreseeable" if there is a substantial likelihood that it will occur. (Regulation 18706(a).) A financial effect need not be certain to be considered reasonably foreseeable, but it must be more than a mere possibility. (*In re Thorner* (1975) 1 FPPC Ops. 198.)

Interest in Real Property

It is presumed that the financial effect of the decision on Horn Property 1 – 3 and Jacob Property B is material. In order to rebut the presumption of regulation 18705.2(a)(1), each supervisor must show that it is *not* reasonably foreseeable that the decision (i.e., the decision to upzone or downzone) will have any financial effect on any of these properties. For example, Supervisor Jacob would have to show that it is not reasonably foreseeable that the effect of reducing the permissible density for properties located within 500 feet of Jacob Property B will not have even a penny's effect on her 90 acres of agricultural land. Similarly, as an example, Supervisor Horn would have to show that it is not reasonably foreseeable that the effect of increasing the permissible density of Horn Property 2 from 1 unit per 10 acres to 1 unit per 4 acres will not have a penny's effect on these 12 acres.

In contrast, the financial effect of the general plan amendment decision on Jacob Property A is presumed *not* to be material under the Commission's regulation. It is not reasonably foreseeable that this property will experience a material financial effect as a result of this decision unless this presumption is rebutted as described in regulation 18705.2(b)(1).

Business Entity/Source of Income

After identifying the applicable materiality standards, each supervisor must then assess whether it is reasonably foreseeable that the decision will affect his or her business entity or sources of income in an amount that rises to the monetary level considered material for that particular economic interest. If it is reasonably foreseeable that the monetary threshold will be met as a result of the decision, then the supervisor will have a conflict of interest arising from that business entity or source of income and would be prohibited from participating in the decision.

⁸ The Commission's conflict-of-interest analysis requires that the supervisors identify and apply the applicable materiality standard for *each* economic interest in addition to completing the final steps of the analysis. As such, each supervisor must do so with regard to any sources of incomes (*e.g.*, customers or lessees) in whom the supervisor has an economic interest since, in the absence of additional facts, we are unable to complete the required analysis for these economic interests.

The Commission does not act as a finder of fact in providing advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Therefore, the determination of whether or not it is reasonably foreseeable that the applicable materiality standard will be met for any of the supervisors' economic interests is necessarily a factual question that is ultimately for each supervisor to decide. However, we reiterate the Horn Property 1 – 3 and Jacob Property B are presumed to experience a material financial effect as a result of the decision.

Step Seven: “Public Generally” Exception

Even if a public official determines that his or her economic interest will experience a material financial effect as a result of the decision before the official, he or she may still participate if the “public generally” exception applies to each person or real property triggering a conflict of interest. (Regulation 18707(b)(4).) Regulation 18707.1 provides the requirements for the general exception:

“(a) Except as provided in Government Code sections 87102.6 and 87103.5, the material financial effect of a governmental decision on a public official’s economic interests is indistinguishable from its effect on the public generally if both subdivisions (b)(1) and (b)(2) of this regulation apply.

(b) Significant Segments and Indistinguishable Effects.

(1) Significant Segment. The governmental decision will affect a ‘significant segment’ of the public generally if any of the following are affected as set forth below:

(A) Individuals. For decisions that affect the personal expenses, income, assets, or liabilities of a public official or a member of his or her immediate family, or that affect an individual who is a source of income or a source of gifts to a public official, the decision also affects:

(i) Ten percent or more of the population in the jurisdiction of the official’s agency or the district the official represents; or

(ii) 5,000 individuals who are residents of the jurisdiction.

(B) Real Property. For decisions that affect a public official’s real property interest, the decision also affects:

(i) Ten percent or more of all property owners or all homeowners in the jurisdiction of the official’s agency or the district the official represents; or

(ii) 5,000 property owners or homeowners in the jurisdiction of the official’s agency.

(C) Business Entities. For decisions that affect a business entity in which a public official has an economic interest the decision also affects 2,000 or twenty-five percent of all business entities in the jurisdiction or the district the

official represents, so long as the effect is on persons composed of more than a single industry, trade, or profession. For purposes of this subdivision, a not for profit entity other than a governmental entity is treated as a business entity.

¶...¶

(2) Substantially the Same Manner: The governmental decision will affect a public official's economic interest in substantially the same manner as it will affect the significant segment identified in subdivision (b)(1) of this regulation."

Significant Segment

Regulation 18707.1(b)(1)(B) is the "significant segment" standard used when the decision affects an official's real property. As stated above, to qualify as a significant segment under regulation 18707.1(b)(1)(B), the decision has to also affect 10% "or more of all property owners or all homeowners in the jurisdiction of the official's agency or the district the official represents; or (ii) 5,000 property owners or homeowners in the jurisdiction of the official's agency."

For decisions that affect a business entity in which a public official has an economic interest, the "significant segment" prong is met if "the decision also affects 2,000 or twenty-five percent of all business entities in the jurisdiction or the district the official represents, so long as the effect is on persons composed of more than a single industry, trade, or profession." (Regulation 18707.1(b)(1)(C).)

For decisions that affect an individual who is a source of income to a public official, the "significant segment" prong is met if the decision also affects 10% or more of the population in either the jurisdiction or district of the official, or, alternatively, 5,000 individuals who are residents of the jurisdiction.

You have stated that a portion of the general plan amendment decision to conceptually approve the land use map proposing to rezone density designations applies to and affects at least 9,974 property owners and that the other portion will affect 10,000 property owners (*i.e.*, more than 5,000 property owners). Therefore, the decision will affect a significant segment of the "public generally" as specified in subdivision (b)(1)(B) of regulation 18707.1. Therefore, the first prong of the "public generally" exception is met for the supervisors' real property.

Although you have not provided facts necessary for an analysis of whether the "public generally" exception applies to the supervisors' respective economic interests in business entities or other sources of income, each supervisor must apply the same type of factual analysis to determine whether the requirements for the "significant segment" prong of regulation 18707.1(b)(1)(A) or (C) will be met, if applicable. (Also see regulation 18707.)

“Substantially the Same Manner”

Now it must be determined if the decision will affect each of the supervisors’ economic interests in substantially the same manner as it will affect the significant segment of the “public generally.” Pursuant to section 87103, the official must consider the “financial effect” that the decision will have. Merely considering to whom the provisions of a proposed decision applies, without any quantification of the decision’s financial effect, will not be sufficient to determine whether requirements of the “public generally” exception are met.

With regard to the supervisors’ property, the “significant segment” will be affected in “substantially the same manner” if, as a result of the general plan amendment decision, 10% or more of all property owners or all homeowners, (or, alternatively, 5,000 property owners) will experience a similar financial effect due to new upzoning or downzoning designations.

Regulation 18707.1(b)(1)(B) and (b)(2) require that property owners or homeowners, not parcels, are financially affected by the decision in substantially the same manner as the official’s economic interest. Therefore, the financial effect of the decision on the official must be compared with the financial effect of the decision on other property owners or homeowners.

However, starting with a review of the decision’s effect on specific parcels is helpful in identifying substantially similar financial effects. The information that you have provided comparing parcels of property which are similar to the supervisors’ properties and which are proposed to be similarly rezoned shows that:

- With respect to Horn Property 1 and 2, 100 parcels would be similarly redesignated from 1 unit per 10 acres to 1 unit per 4 acres.
- With respect to Horn Property 3, 143 parcels would be similarly redesignated from 1 unit per 10 acres to 1 unit per 2 acres.

Based on this information, only a few property owners/homeowners would be affected in substantially the same manner as Supervisor Horn. We note that while your facts state that a designation of 1 unit per 4 acres is similar to designations of 1 unit per 2 acres and 1 unit per 1 acre, the differences in these designations could amount to double or more the development potential of the property to be rezoned. Additionally, it is not clear that “counting” parcels designated 1 unit per 2 acres along with the official’s property designated 1 unit per 4 acres is appropriate under the “public generally” exception rules since the official would be prohibited from developing his property where a density of 1 unit per 2 acres were to occur. Therefore, in determining whether the “public generally” exception applies, we have counted parcels for which the same changes in density are proposed.

The Jacob Property B is not subject to rezoning but is located with 500 feet of properties proposed to be rezoned. Therefore, if Supervisor Jacob could show that a significant segment of property owners or homeowners will experience a similar financial effect due to nearby properties being rezoned, then the “public generally” exception would apply to the Jacob Property B.

Please keep in mind that a public official owning a large amount of acreage will presumably experience a larger financial effect as a result of the decision than a property owner with a much smaller amount of land will experience. Consequently, Supervisor Jacob should use comparable sizes of land holdings to assess substantially similar financial effects. (See *Zaltsman* Advice Letter, No. A-93-484, concluding that the “public generally” exception does not apply to a zoning decision where the requisite number of property owners do not own similar sized land holdings as public official.)

The “substantially the same manner” rule of regulation 18707.1(b)(2) also applies to economic interests which are business entities or individuals, such as customers or lessees. For all economic interests, if both prongs are met, then the “public generally” exception will apply. You have not provided information for us to analyze these economic interests. We therefore conclude our “public generally” analysis here.

However, each supervisor must independently apply regulation 18707.1 to his or her sources of income and business interests, if any, before the supervisor can participate in the decision. (Regulation 18707.)

Segmentation

If you find that the “public generally” exception does not apply for a particular supervisor, the supervisor may still be able to participate in other decisions pertaining to the general plan amendment. We have previously advised that large and complex decisions may, under certain circumstances, be divided into separate decisions so that an official who has a disqualifying interest in one component of the decision may still participate as to other components in which the official has no financial interest. (*Merkuloff* Advice Letter, No. I-90-542.) Thus, if the land use map decision is segmented into smaller, more specific decisions so that these decisions can be considered separately, a supervisor may be able to participate in some of the more specific decisions leading up to the amendment of the general plan provided he or she does not have a conflict of interest in the more specific decisions. For example, the Board of Supervisors may wish to first consider a map and density designation decision regarding “General Agricultural” parcels without participation by Supervisors Jacob or Horn and then proceed with the decisions on the remaining types of parcels.

Specifically, the following procedure should be used to permit the officials to participate in some of the decisions:

1. The decisions for which the official has a disqualifying financial interest must be segregated from the other decisions on the agenda;

2. The decisions for which the official is disqualified should be considered first, and a final decision reached without his participation in any way;

3. Once a decision has been made on the portions of the Plan for which the official has a disqualifying interest, the official may participate in subsequent deliberations regarding other portions of the Plan, so long as (1) those deliberations do not result in a reopening or in any way affect the decision from which the official was disqualified, and (2) those decisions will not have a material financial effect on any of the official's economic interests. (*Huffaker* Advice Letter, A-86-343.)


Step Eight: "Legally Required Participation" Exception

The facts you have presented do not suggest that the "legally required participation" rule, an exception to the conflict-of-interest rules, is applicable to either of the supervisors' situations.

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca
General Counsel

By: 
Natalie Bocanegra
Counsel, Legal Division

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